

Submission on the Accessible Streets Regulatory Package

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Summary

Living Streets Aotearoa supports many of the proposals in the Accessible Streets Regulatory Package, in particular proposals 4-9. However, we do not support most of those most directly affecting pedestrians, i.e. proposals 1-3 because they will make pedestrians less safe and feel less safe. This is in conflict with the responsibility stated in the NZ Road Safety Strategy 2020-2030 and multiple statements of the Associate Minister of Transport. Furthermore, to increase the barriers to the full participation in society of disabled people, as these proposals will do, is a breach of New Zealand's obligations under the UN Convention on the Rights of Persons with Disabilities.

We find that Proposal 1 to allow all ages riding of cycles and other transport devices on footpaths is inconsistent with the evidence that exists concerning its safety and its impact on rates of cycling. Also, the classification scheme proposed remains defective and ignores the conclusions of NZTA Research Report 621 (Lieswyn et al. 2017) as well as the recommendations of the OECD/International Transport Forum. We propose a classification system based on mass and potential speed of vehicles and also a rule that maintains footpaths as safe places for pedestrians while allowing young children to ride non-motorised bicycles there.

Proposal 2 describes some behavioural rules and a vehicle size rule. With the exception of the 15km/h speed limit, the behavioural rules are not new. Their failure to prevent the considerable amount of conflict that occurs on shared paths currently suggests that they will not be sufficient to ensure pedestrians are safe if footpaths are turned into shared paths as is the effect of Proposal 1. They are subjective and unenforceable and as such cannot be part of good regulation.

The 15km/h speed limit is an absurdity that suggests that the proposals have been put forward with very little understanding of, or interest in, the pedestrian experience. It is completely at odds with NZTA's approach to speed limit setting on roadways where speed limits are expected to be safe and appropriate for the nature of the road and the users on it. The only speed limit that is appropriate for maintaining the current multiple functions of footpaths is a fast walking pace, in the vicinity of 6km/h.

Proposal 3 covers shared paths. We accept that these are intended for use by a range of human-powered and low-powered transport devices. But again, the speed limits proposed in the Package are completely inappropriate, seemingly having been made with the fast commuter cyclist in mind not the many other users. Given the importance of footpaths to pedestrians, but especially to older and to disabled people, we believe the proposals are seriously defective. We propose a better alternative.

Our submission is divided into 4 parts as follows:

In Part 1 of this submission, we explain our reasoning for our position, covering multiple aspects, and suggest better alternatives.

In Part 2, we detail our responses to the individual proposals. We have made some suggestions for improvement of some of these proposals including achieving national consistency for Proposal 6d so as to increase the likelihood of the proposed law being understood and abided by. We have proposed an alternative.

Part 3 is a list of references and also the Annexures referred to in the text. Annexure 5 is a legal opinion on the performance of the government in respect of the United Nations Convention on the Rights of Persons with Disabilities in connection with the Accessible Streets Package and the licensing of Lime e-scooters (it includes 11 appendices. The opinion and appendices are attached separately from this document.)

We gratefully acknowledge the assistance of Sir David Williams QC, and Mr Chris Browne and Mr Adam Holden of Wilson-Harle law firm in preparing and providing us the opinion.

Part 4 consists of 3 very short videos showing what situation is likely to be faced on the majority of New Zealand's footpaths if the proposals to allow all ages riding of cycles and other low-powered transport devices on footpaths are adopted. The speed of the rider was about 12 km/h. (The videos are attached separately from this document.)

PART 1

Introduction

1. Living Streets Aotearoa supports all road users being safe and feeling safe on our streets. Critical parts of this are to:
 - a) separate modes that travel at considerably different speeds or that have considerably different mass
 - b) decrease speeds so that all users travel at approximately the same speed in any particular movement space
 - c) protect vulnerable users.
2. We also support the use of modes of transport that contribute to decreasing congestion, decreasing pollution, increasing people's physical and mental health through exercise, making towns and cities more liveable, making active modes safer and more efficient and making our transport system safer and more accessible.
3. We point out that walking is the most space efficient, affordable and environmentally sustainable mode of transport that exists. It is also the second safest mode of transport in NZ, outranked only by bus travel on a time spent basis (Ministry of Transport 2013). The ability to walk about a city is also regarded as a key indicator of its liveability.
4. Footpaths are more than just movement corridors. They are social spaces in which neighbours and strangers meet, stop, talk. Children play on them. Businesses advertise and offer goods on them. Rubbish is collected from bins placed on them. Turning them into purely movement corridors will undermine these functions of footpaths.
5. We would greatly welcome the Government and its agencies taking a much more collaborative approach to footpath management. There are many aspects about their current management which makes some footpaths less than satisfactory and some of the proposals in the Accessible Streets Package (ASP) will make them even worse.
6. We request that we and other submitters be allowed to make oral presentations to the relevant Committee, Agency, Ministry and/or Minister, at a time to be fixed after the closing of submissions but before decisions are made upon the Accessible Streets package or proposals.

Are we included?

7. The ASP proposes a number of changes which it states (p8) are
'designed to:
 - *make our footpaths, shared paths, cycle lanes, cycle paths and roads safer and more accessible for you*
 - *accommodate the increasing use of micro-mobility devices like e-scooters on our streets and footpaths*
 - *encourage active modes of transport and support the creation of more liveable and vibrant towns and cities*
 - *make social and economic opportunities more accessible to you*
 - *make public transport (buses) and active transport modes such as walking or cycling safer and more efficient.'*
8. Although the ASP contains some proposals that are good for riders of cycles and other light individual transport devices (LITDs) and users of buses, with one exception (proposal 6d), the package fails to achieve any improvements for pedestrians. It will make walking less safe for, and feel less safe to, pedestrians and consequently make our communities less accessible to us.

9. The ASP also states (p8)

*'Our proposed rules create a national framework that clarifies how and where vehicles and devices can be used. Our goal, in creating this framework, is to ensure that **everyone** can access a range of transport options and feel safe when they are travelling down the street.'*

(Highlighting added)

10. This reflected the Government Policy Statement on Land Transport (2018) which said it prioritised safety for **everyone** (highlighting added) using the road, paths and public transport, and access to economic and social opportunities.
11. Proposals 1-3 of the ASP suggest that pedestrians have been excluded from the category 'everyone' as they will decrease pedestrians' safety and perception of safety and as a consequence, decrease our access to economic and social opportunities in our communities. This is especially so for many disabled people and older people who are dependent on footpaths to be able to reach workplaces, schools, shops, leisure places etc.
12. We have received reports of many pedestrians feeling unsafe in the presence of bicycles and e-scooters on the footpath, some to the extent that they are now fearful of going out on foot. A few examples of what they have shared with us are included in Annexure 1.

Is it just double-speak?

13. The ASP goes on to explicitly say (p10)

*'People should be able to **feel safe** and travel safely throughout our country, whether they are in vehicles or **travelling as pedestrians** or using other active modes.'*

(Highlighting added.)

14. This is in accord with the NZ Road Safety Strategy 2020-2030 statement (p4) that

*'Road safety goes beyond our obligation to prevent deaths and injuries to improving lives and lifestyles too. It ensures everyone, **even our most vulnerable road users, feels safe** to use our transport network.'*

(Highlighting added.)

15. And it also reflects the Minister's repeatedly-stated belief that people should not only be safe but feel safe in moving about their communities (e.g. at the opening of Te Ara Kotahi, Palmerston North, 7th June 2019; letter to Living Streets Aotearoa 4/10/2019 (see Annexure 2); announcing lower speed limits around schools 28/11/2019 https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12289068).
16. We thoroughly agree with and support the ASP, the Road Safety Strategy and the Minister in this regard and so are baffled as to why the safety, and feelings of safety, of pedestrians on footpaths has been so compromised by these proposals. We believe the best way to achieve it is to provide distinct spaces for distinct modes of transport that travel at substantially different speeds. This is a basic principle of road safety.
17. Given that the main goal of this package appears to be to provide people greater opportunity to use bicycles and powered LITDs safely so as to decrease congestion and pollution caused by car use, it would be equitable to provide distinct spaces for them by reallocating space currently used for car use rather than from space used for walking. Besides fairness, this would provide both 'push' and 'pull' forces to achieve mode shift more quickly.
18. It is excellent to see the Minister recognising the importance of people's feeling of safety. Such feelings are important in determining people's willingness to use different modes of transport. This is seen vividly in regard to cycling where perceptions of cycling being unsafe are frequently cited as a major reason for people not cycling (e.g. <https://www.theguardian.com/commentisfree/2018/jun/13/safety-women-cycling-roads>; <http://www.aviewfromthecyclepath.com/2008/09/three-types-of-safety.html>; <https://www.cycling-embassy.org.uk/wiki/barriers-cycling>). It almost certainly applies to

walking as well.

19. The proposals to allow people of all ages to ride powered transport devices and bicycles on footpaths makes many pedestrians, not just old ones or disabled ones, fearful of being struck, caused to fall, or expected to move out of the way (see Annexure 3 for recent accounts of pedestrians experiencing this).
20. This is despite the proposed requirements for careful and considerate use because those requirements already exist under the Road User Rule 2004 (clause 11.1A) and are frequently breached on shared paths, giving us little confidence that they will be observed on footpaths.
21. Furthermore, in Ward and Mackie's (2016) report, they analysed cyclist crashes that were recorded in the Crash Analysis System (CAS). There were more than 1000 crashes recorded as occurring on footpaths or shared paths. Even without taking into account the high level of under-reporting that is known to occur for such crashes, this suggests there is a high level of riding without due care for the conditions. This reinforces our view that the evidence suggests that footpaths are no place for people to be riding bikes or other transport devices capable of substantive speeds.
22. Relying on people being careful and considerate is completely unsuitable because of the subjectivity involved. What may seem to one person like giving others sufficient space when passing may seem very inadequate to the one being passed. Many people, not just young ones, have poor ability to view things from another person's perspective and so may only assess risk to themselves rather than also assessing the risk of their action to another person.
23. Cyclists know this only too well, often feeling very unsafe when being passed at close quarters by people driving motor vehicles. Pedestrians feel the same way. It seems particularly inequitable of the proposals to require motor vehicles to pass riders no closer than 1m and yet not to require a similar passing gap for riders passing pedestrians.

Impact on older people

24. For older members of our community, a fall on a footpath can be fatal or result in long-term pain and incapacity and could make them very wary about using footpaths. They don't have to be hit to fall over. Even an e-scooter unexpectedly coming close to them can be enough for them to lose balance and fall. For some people, that is the nature of becoming old. Transport system designers and managers need to take this into account and provide for the frailty and balance of older users.
25. Providing safe and comfortable walking spaces for pedestrians is also a fundamental aspect of creating cities that are age friendly. The WHO checklist of essential features of age-friendly cities (https://www.who.int/ageing/publications/Age_friendly_cities_checklist.pdf) includes

*'Pavements are well-maintained, free of obstructions and **reserved for pedestrians** and*

Pavements are non-slip, are wide enough for wheelchairs and have dropped curbs to road level.

Drivers give way to pedestrians at intersections and pedestrian crossings.

***Cycle paths are separate from pavements and other pedestrian walkways**'.*

(Highlighting added)

26. As our older population increases, creating cities that are age-friendly will be even more important than it is today. Yet the proposal to allow all ages cycling and the riding of a wide range of other LITDs on footpaths is going in exactly the opposite direction.
27. For most people, walking is the first and last exercise they undertake. For the young it is hardly seen as exercise but for the old it is a vital part of their maintaining good physical health. Furthermore, it is a low risk activity that also benefits the mental health of people of all ages. Both these features have been reasons walking close to home was promoted as something people could do during the level 4 lockdown response to Covid-19 that began on 25/3/2020.

28. Part of the mental health benefit is the opportunity provided by walking for people to see or meet other people, either known to them or strangers. It also provides an opportunity to spend time among vegetation which has been shown to have positive mental health effects (Feldman, 2015).
29. Traffic Design Group and the University of Waikato (2017) found that for older people, who are not disabled, footpaths are really important for exercise and social interaction. Going for a walk on a public footpath was the most highly rated activity (higher than going to a movie, having a coffee at a shop, using a bus or a library) among 400 people surveyed. Walking helps them to avoid loneliness and depression which has real cost to society.
30. In addition, for some older people who are unable or unwilling to drive or use public transport, walking may provide their only independent means of accessing services, facilities and events and so participate in the life of their community.
31. It should also be noted that the NZ population is rapidly aging and, with that, the prevalence of disability and frailty is increasing. Hence, the importance of footpaths in providing a space that is safe and feels safe to pedestrians and people using mobility devices, because of disability, is also growing for both physical and mental well-being reasons.
32. It is concerning that in developing the ASP proposals, there appears to have been no primary research or analysis done of the likely impacts of the proposed rule changes on the willingness of older people to use footpaths. There is relatively little literature available on the topic and so surveys and focus groups with older people should have been conducted. Even the research that does exist (e.g. Garrard 2013) seems to have been over-looked. This is a major deficiency in the development of these proposals.

Impact on disabled people

33. The effect of implementing proposals 1-3 are also likely to be profound for many disabled people, whether suffering from cognitive, sensory or motor impairments. Many disabled people are not old. Besides enabling many disabled people to access social opportunities, safe footpaths also enable access to work and learning opportunities.
34. The financial cost of disabled people not being as able to be fully part of the workforce as members of the general population has been estimated in the hundreds of millions of dollars (NZIER, 2017). Transport was identified as one of the barriers disabled people faced. This barrier will be exacerbated if all ages cycling and use of powered LITDs is allowed on footpaths. In turn, this will increase the economic cost and further disadvantage disabled people by further preventing them from fully and equally enjoying all human rights and fundamental freedoms to which they are entitled in the same way that people who are not disabled are entitled to them.
35. This appears to be in contravention of the purpose of the 2006 UN Convention on the Rights of Persons with Disabilities (UN CRPD). Given that disabled pedestrians, such as people who are blind, will be severely disadvantaged by the proposals to allow numerous types of vehicles to be used on the footpath at speeds several times faster than walking speed, it would seem that adopting proposals 1 and 2, at least, would be a failure to meet our obligations under the UN CRPD.
36. New Zealand was instrumental in developing the UN CRPD with Don Mackay, New Zealand's ambassador to the UN at the time, chairing the committee that drafted the text of the Convention. It would be extremely embarrassing for New Zealand to make such an egregious breach of the Convention .
37. It is most disturbing that the UN CRPD was not recognised among our international obligations on p78 of the Accessible Streets consultation document and was only mentioned as the final statement of the document on p82 as follows:

'There's a possibility that allowing people on cycles to use footpaths could be considered inconsistent with New Zealand's obligations under the UN

Convention on the Rights of People with Disabilities, if it were to result in restricted accessibility. We'll consider this as part of consultation.'

38. This lack of detailed consideration being given to the UN CRPD was despite the Minister having been reminded of New Zealand's obligations under it on 21/7/2019 (Annexure 4) and her assuring us on 4/10/2019 (Annexure 2) that it would be considered before the package was released for consultation.
39. We have included the legal opinion of Sir David Williams, QC, on this point, at Annexure 5 and we reserve our right to file a Communication with the Committee on the Rights of Persons with Disabilities pursuant to the Optional Protocol to the Convention.
40. It should be noted that in New Zealand, 'accessibility' has a comprehensive meaning that takes into account not only the physical characteristics of a service, facility or infrastructure but also the willingness of people to use it on account of perceptions of safety. So for example, roads are actually able to be used by children and inexperienced adults riding bikes but they are not accessible if those users (or their guardians in the case of children) perceive them to be too dangerous because of the lack of dedicated lanes for them to use, the density or speed of other vehicles or the behaviour of other road users. The same applies to footpaths. These become inaccessible to pedestrians if they are perceived as unsafe because of the presence or prospect of encountering vehicles on them travelling at speeds faster than walking speed.
41. There is empirical evidence in New Zealand of the effect of the perceived safety of disabled people using footpaths on their willingness to use them. Traffic Design Group and the University of Waikato (2017) found that people using mobility aids avoided using paths when those paths were likely to be busier which has implications for intensifying the use of paths through allowing more types of users on them. Furthermore, the value attributed by these people to paths used for regular or occasional walking was diminished if riding bikes was permitted on them whether or not the paths were widened.
42. The authors also found that disabled people who use footpaths
- 'aim to minimise overall journey time because travel is stressful and effortful; but they have acute awareness of their vulnerability, so will only travel on footpaths and cross roads where they perceive themselves to be safe;'*
- and
- 'Encountering cyclists on footpaths affects people with disabilities' expectation about safety in particular, so they are less likely to select the same route in future. Their limited choices mean that **the presence of cyclists can result in their decision not to undertake the trip at all.**'*
(Highlighting added)
43. It is not only the riding of cycles and LITDs on footpaths that adversely affects disabled people. Parking (or leaving) these devices on the footpath can be a severe danger to disabled people, especially blind ones. It is arguable that leaving these devices on footpaths is illegal since clause 6.14 of the Road User Rule 2004 states
- 'Parking on footpaths or cycle paths*
(1) *A driver or person in charge of a vehicle must not stop, stand, or park the vehicle on a footpath or on a cycle path.*
(2) *Subclause (1) does not apply to cycles if a road controlling authority indicates otherwise by means of signs or markings or if it installs facilities for the parking, standing, or storage of cycles on a footpath or cycle path.*
(3) *Nothing in subclause (1) prevents a person from stopping, standing, or parking a cycle, mobility device, or wheeled recreational device on a footpath if doing so does not unreasonably obstruct any other user of the footpath.'*
44. To leave an e-scooter, bicycle or any other LITD on the footpath, in a location not specifically indicated as where they should be parked, does unreasonably obstruct other users, especially people who are not able to see where they have been left. This situation could be rectified by providing specific places off the footpath for parking of LITDs. Reallocating car-parking

spaces for this purpose would be especially sensible, again helping to provide 'push' as well as 'pull' forces to achieve mode shift.

45. As is the case for older people, in developing proposals 1-3 in the ASP, there appears to have been no research or analysis done of the likely impacts of the proposed rule changes on the willingness of disabled people to use footpaths. This is another major deficiency in the development of these proposals.

Evidence base

46. On a broader level, we are concerned about the use of the information relied upon in formulating the proposals of the ASP. The consultation document states (p10)

'We've taken the following into account when writing our proposed rules:

- *Recommendations from Improving Road Safety in New Zealand.*
- *2014 Cycling Safety Panel's report Safer journeys for people who cycle.*
- *The report from the Transport and Industrial Relations Select Committee on the petition of Joanne Clendon in May 2016 [2014/59] on children cycling on the footpath.'*

47. The first-mentioned document appears to have been a 2018 Cabinet paper (<https://www.transport.govt.nz/assets/Uploads/Our-Work/Documents/933cf31df1/REDACTED-Improving-Road-Safety-in-New-Zealand-Redacted.pdf>) presented by the Associate Minister of Transport in which she recommended a series of short- to medium-term initiatives to improve road safety, including

'9.6 enhancing the safety of vulnerable users, such as people walking and cycling, older people, people with disabilities and children, by clarifying rules around the vehicles that are allowed on footpaths, cycleways, shared paths and roadways;'

(Highlighting added)

48. We do not believe that the ASP enhances the safety of older people, people with disabilities, children or anyone else walking on footpaths. On the contrary, it cannot but make them actually less safe, as well as feel less safe, because the number of vehicles being used on footpaths is likely to increase as a result of the proposals and the speed limits set for footpaths and other types of paths are not safe and appropriate. No information is given on what are the current speeds of vehicles used on paths and in lanes so there is no basis for knowing whether a speed limit of 15km/h (or any other speed) will result in a lowering of the speed they travel at and hence the safety benefit. Overseas evidence on the speed of riders on footpaths, shared paths, cycle paths, cycle lanes and the road is inconsistent and this is a case where NZ specific data is needed. Whether the package offers any safety benefits for people riding cycles or powered LITDs is questionable (see later).
49. The second-mentioned document (<https://saferjourneys.govt.nz/assets/Safer-journeys-files/Cycling-safety-panel-final-report.pdf>) did not propose allowing all ages cycling on footpaths. It made 15 recommendations, many of which it said needed to be acted upon simultaneously to deliver safer roads for cyclists. On pp8-9 the panel gave its top two recommendations to improve cycling safety as the provision of fit-for-purpose, connected and completed urban cycle networks and managing speeds. The panel did not recommend riding on the footpath for either all ages or any subset of ages.
50. We support the Panel's highest priority recommendations and acknowledge that work is progressing on implementing both of them. We encourage Government to allocate more resources to hastening their implementation. Ward and Mackie (2016) pointed out that allowing cycling (and by implication, use of LITDs) on footpaths, may decrease the impetus for local government to develop fit-for-purpose cycling lanes. This is a very real prospect.
51. Only the third document (https://www.parliament.nz/en/pb/sc/reports/document/SCR_74090/petition-20140059-of-joanne-clendon) recommended cycling on footpaths and that was only for children under 12 years old, people over 65 and those with mental or physical disabilities. This was not one of the options considered in formulating the ASP. Ward and Mackie (2016) believed it was too

complex to be practical.

52. It is baffling, to say the least, that NZTA considered allowing people up to the age of 16 to ride on footpaths as part of the ASP when nobody seems to have sought or recommended that course of action. Similarly, nobody has sought or recommended all ages cycling on footpaths.
53. Furthermore, the Clendon petition sought to have children up to the age of 14 ride on footpaths partially on the grounds that that is the age at which they are allowed, in New Zealand, to be left alone at home. There is no obvious connection between motor skills and risk assessment capacity necessary for safely riding bicycles on road and the ability to stay at home unsupervised where, by and large, interaction with others is limited. Far more relevant to how children travel about is the level of cognitive development which enables them to assess risk.

What aged children should be allowed to ride on footpaths

54. Parachute, Canada's national injury prevention organization, maintains that children under age 10 are not physically and cognitively ready to ride their bicycles on the road with motor vehicle traffic (Parachute. Cycling.)
55. This is similar to the position of the NZ Police which has learning materials for years 4-6 (ages 8-10) oriented to riding on the road in future and materials for years 7-8 (ages 11-12) oriented to riding on the road (NZ Police National Prevention Centre).
56. Although, the evidence is inconclusive about whether it is safer for children to ride on footpaths or roads (see section below), we recognise that perception of safety is a major factor in determining people's willingness to use different modes of transport. On that basis we are willing to support the riding of unmotorised cycles, irrespective of wheel size, by children 10 years old and younger on footpaths provided monitoring of the effect of this on other footpath users is undertaken, the change reviewed after 2 years and reversed if found to adversely affect pedestrian willingness to use footpaths where children cycle. This should also be subject to limitations able to be imposed by the relevant Road Controlling Authority (RCA) on cycling in any specific area such as in business zones, near hospitals or retirement villages etc.
57. This would be consistent with the Parachute and NZ Police positions.
58. Given that it is widely accepted that children's mental faculties and motor skills are still developing, it would make sense to prohibit them being in control of any vehicle capable of more than a low speed. Griffin et al (2008) cited in Lieswyn et al (2017) found children were 3 times more likely to be severely injured riding powered scooters than unpowered ones. We suggest that, except to overcome disabilities, people younger than 16 (the age at which they are eligible to obtain a driver's licence to ride a motor cycle for example) should not be permitted to operate, on any public land, motorised vehicles capable of more travelling at more than 10km/h. Although somewhat arbitrary, that should limit the amount of damage they can cause to themselves and others. Without using an age limit, the only sensible alternative is to use a knowledge and competency test which seems unduly burdensome.
59. Allowing teenagers to ride on footpaths is particularly problematic. This is a prime risk-taking age when young people are testing themselves and testing the boundaries of what is acceptable including by breaking rules. MRCagney (2018) citing Ellis (2014) said that research indicates that teenage cyclists indulge in greater risk-taking behaviour than adults. Guo et al (2014) cited in Lieswyn et al (2017) found users of e-bikes and e-scooters were significantly more likely to run red lights than riders of conventional bicycles, and young riders were the most likely to run red lights and older riders the least likely. Briem et al (2004) also cited by Lieswyn et al (2017) found the speed ridden at, and the number of mistakes made by, 12 year olds was greater than for younger riders and this may have been due to greater risk-taking behaviour by the older children. Ward and Mackie (2016) stated

'the literature was clear that teenage male cyclists were most at risk of having a crash with a pedestrian (Oulton and Hynes 1995), and that in cyclist-pedestrian crashes the cyclist was most likely to be young and the

60. So why allowing young people, 16 years old or younger to ride on footpaths was one of the options considered in developing the ASP is quite extraordinary, except as a straw man. We oppose that option as well as the proposal to allow all ages riding on footpaths.
61. One of the arguments put forward in support of allowing children to ride on footpaths in New Zealand, and one on which Ward and Mackie appeared to put some weight, was that if it were legal then children would be able, legally, to be given instruction on safe footpath cycling. That may be the case, but there is conflicting evidence on whether cycling education programmes actually work. Most studies do not report on the actual prevalence of injuries in 'educated' groups and 'control groups. In a fairly recent review, Richmond et al (2014) found there is no firm evidence that such educational efforts actually result in decreased injury despite increasing knowledge. Whether they result in improved cycling behaviour is also inconsistent. Such results might be very dependent on the particular programmes involved so before this is used as a reason for allowing footpath cycling, the current programmes used in New Zealand should be assessed for their actual effectiveness in increasing cycling, improving cycling behaviour and decreasing injury rates.
62. Even if the New Zealand programmes are effective, they are done on too small a scale to cover enough of the people who might decide to ride on footpaths if proposals 1 and 2 are implemented. The number of adults taking such courses is especially small. So if people are allowed to ride on footpaths, there will be many who have never received training.
63. Thinking that a public education campaign will suffice is wishful thinking. If it weren't then why is there any need for a rule to make it illegal for a motor vehicle to pass closer than 1m to a cyclist? After all, we have had plenty of public education messages about that over a number of years but many cyclists still experience closer calls.

Safety of riders riding on footpaths

64. Not only will riding (cycles or powered LITDs) on footpaths inevitably result in decreased safety and feelings of safety for pedestrians, but it may not be safe for riders either. The Cycling Safety Panel's final report (2014, p10) identified that the majority of motor vehicle-cycle fatal and serious injury crashes occur at urban intersections and driveways with 14% occurring at driveways in urban areas. This is likely to increase markedly if cycling and riding of powered LITDs on the footpath increases, which is the predictable result of the proposals.
65. Various analyses of the risk of injury to cyclists on footpaths have been published.
66. Aultman-Hall and Adams (1998) found substantially higher rates of collisions, falls and injury for adult commuter bike riders on footpaths than on roads in Toronto and that some of these collisions involved pedestrians. Riders who did not ride on footpaths at all had lower rates, per distance travelled, of collision, falls, injury and major injuries on roads than did riders who rode at least partly on footpaths during their commute.
67. Carlin et al (1995) found a strong association between injury risk and children riding more than 5km on the footpath in a week, attributing this to children facing difficulties in controlling their bikes due to the uneven nature of footpath surfaces.
68. Reynolds et al (2009) also found that cyclists using footpaths and multi-use trails had the highest risk of injury and Senturia et al (1997) found that children and adolescents who only rode on footpaths had a higher risk of injury than those who rode sometimes or always on the road. Wachtel and Lewiston (1994) found that for bicycle riders, whether male or female, older or younger than 18, or riding in the same direction as adjacent motor vehicles or not, riding on the footpath resulted in a higher rate of crashes than riding on the road, with driveways being particularly hazardous.
69. Although MRCagney (2018) acknowledged that studies of the safety of riding on the footpath are mixed, it reported that Poulos et al (2011)

'estimated that the crash rate for cyclists on the footpath was 5.6 times that

of cyclists on the road’.

70. And a separate study by Garratt et al (2015) found that over half of the child bike rider crashes [between 2002 to 2012] involved being hit after emerging from a footpath or driveway. They also found that 11% of reported bicycle crashes were with pedestrians. It is well-accepted that such collisions are greatly under-reported.
71. Ward and Mackie (2016) concluded, after reviewing the literature from 1988 to 2016,
‘Excepting Drummond (1988), the literature supports the case that cyclist crashes on footpaths and shared paths are more likely than on roads.’
72. MRCagney (2018) citing Reynolds (2009) said that an international literature review of the impact of cycling infrastructure on cycling injuries found that
‘most studies that considered sidewalk-riding suggested that it is particularly hazardous for cyclists, with estimates of 1.8 to 16 times the risk of cycling on-road’
73. Given these findings and conclusions, it seems untenable for NZTA to propose that people of all ages be allowed to ride bikes on footpaths. Although it is still too early for many studies to have been done of the incidence of crashes of e-scooters and other powered LITDs on footpaths compared to on the road, it seems likely that a similar pattern will emerge, with driveways being the primary point of danger for riders if used in similar locations to those where cycling occurs.

Who likely suffers most injury in cyclist-pedestrian crashes?

74. In crashes between riders and pedestrians, MRCagney (2018) concluded that children and older pedestrians were most at risk of injury. Ward and Mackie (2016) tabulated the 13 crashes between riders and pedestrians on footpaths recorded in the Crash Analysis System (CAS) between 2006 and 2015. It showed that 6 of the pedestrians were seriously injured as a result of the crash while only 1 cyclist was.
75. The imbalance may be a result of the age or frailty of pedestrians (a very good reason not to allow riding on footpaths) or of the fact that, unlike motor vehicles, bicycles and powered LITDs have not been designed with features aimed at minimising the severity of pedestrian injuries in crashes with them.
76. Of the 4 cases for which the age of the cyclist was known, 3 were in their 20s and one was 11 (in the latter case the pedestrian was 4 years old). This is consistent with the greater inclination of younger people to take risks.
77. Furthermore, it is well-recognised that there is substantial under-reporting of cyclist and pedestrian crashes as shown by the Ministry of Health's hospital discharge data recording 33 pedestrian-cyclist crashes/per year in the 5 year period from 2010 to 2014 compared with the 13 recorded in total in the CAS during the 10-year period, 2006-2015.

Will allowing footpath cycling increase cycling rates?

78. The idea of allowing bicycle riding on footpaths seems to be predicated on the idea that it will increase the number of people cycling. However, this is questionable. Ward and Mackie (2016) citing Pucher and Garrard (2011) said that there was no detectable change in commuting cycling rates in NSW between 1991 and 1996 after footpath cycling was legalised in 1992.
79. Despite cycling being allowed on footpaths in most Australian states, for at least some age groups, Australian cycling rates are nothing for New Zealand to aspire to as shown by national survey results for the two countries.
80. The Australian 2019 National Cycling Participation Survey (Austroads 2019) reported that only 13.8% of people surveyed said they rode a bike, for any purpose, in the past week, down from

15.5% in 2017 and 18.2% in 2011. Thirty five percent of 0-9 year olds and 33% of 10-17 year olds had cycled in the past week while only 8% of people older than 17 had done so.

81. In comparison, Sport NZ's 2019 Active NZ report found 30% of 5-17 year olds cycled in the last week while 11% of adults did for any purpose.
82. South Australia introduced all ages footpath cycling in 2015 and Western Australia did the same thing in 2016. Yet in both states cycling participation has declined in the succeeding years, even more so in Western Australia than in Australia as a whole (see Table 1). So all ages footpath cycling should not be seen as a way of increasing cycling participation in New Zealand.

Table 1: Percentage of respondents who cycled within the last week preceding the survey (data source: Austroads 2019)

Year	Australia	South Australia	Western Australia
2013	16.5	13.8	18.2
2015	17.4	16.6	23.0
2017	15.5	14.0	18.5
2019	13.8	13.0	15.6

83. In contrast to these levels of cycling, 25% of 5-17 year olds walked for fitness and 57% ran or jogged while 57% of adults walked, 19% ran or jogged and 4% undertook day tramps. Once again walking was the most commonly undertaken physical activity of all in New Zealand. Nothing should be done that risks undermining the appeal of walking.

Enforcement

84. Enforcement along with education and engineering is an essential part of making any road safety measures successful. There is very little enforcement of existing rules concerning footpath use and we do not have confidence that resources will be made available to Police to increase this. They are likely to remain reactive. This would suggest that allowing people to ride on footpaths will result in flouting of any rules put in place, not by everyone but by enough to cause anxiety, discomfort and increased danger for pedestrians.
85. Lieswyn et al (2017) said
'NZ Police representatives consulted for this research indicated enforcement of path speed limits would probably not be a high priority or commonplace occurrence.'
86. This likely lack of enforcement, combined with the proposals being likely to lead to more vehicles being used on footpaths at a wider range of speeds, will result in footpaths being less safe for pedestrians.
87. Even if the proposed rules are abided by, many pedestrians will still feel unsafe. Being passed by a rider travelling at 15km/h on a footpath that is 1.5m or less wide is an uncomfortable experience, even for walkers who are neither old nor disabled. For some pedestrians, at least, it will result in them feeling so unsafe that they will no longer feel able to use the footpaths. For those with no alternative method of getting about that will result in isolation which is associated with greater dependence on health and social services.

Consistency with safe systems approach to road safety

88. Some of the proposals in the ASP seem contrary to the Safe System approach to Road Safety. Ward and Mackie (2016) said, referring to walking and cycling,

'System designers have a responsibility to design appropriate infrastructure

for these modes’.

89. Yet clearly, most footpaths have been designed for pedestrian use not for riding cycles or powered LITDs on. The Pedestrian Planning and Design Guide (NZTA, 2009) defines a footpath as

‘The part of road or other public place built and laid out for pedestrian use.’

90. Footpaths are often narrow with a common width being 1.5m but there are many kilometres which are closer to 1m wide (Report to the Shared RCA Forum Footpaths Working Group, 2017).

91. The Pedestrian Planning and Design Guide (NZTA, 2009) also stated (at section 6.4.4 Share-use paths) that

*‘In a few respects, the characteristics of pedestrians (see section 3) are similar to those of cyclists – so sometimes path-sharing is an appropriate solution for both groups. This can be achieved commonly by creating a **widened**, purpose-built footpath to accommodate both.’*

and

‘More space is required than for a footpath due to the need for cyclists to pass pedestrians travelling in the same direction.’

92. Table 14-13 of the same guide indicates that shared paths, even when they are unsegregated and are for local access purposes rather than for commuting or recreational use should be 2.5m wide and certainly no narrower than 2m. Where the type of use is uncertain paths should be 3m wide. The vast majority of footpaths in NZ are substantially narrower than these widths.
93. The NZTA in developing the ASP appears to be ignoring its own guidance document, turning footpaths into shared paths irrespective of their width.
94. Lieswyn et al (2017) recognised the inadequate width of many footpaths in NZ but said considering that was outside the scope of their research into regulations and safety of electric bicycles and other low-powered vehicles. Road safety is intimately connected with the nature of the infrastructure as evidenced by the design and condition of roads and roadsides being a pillar of the Safe System approach to road safety. Regulation must take the nature and condition of the existing infrastructure into account with rules that are appropriate in that context being developed and adopted.
95. In addition to narrowness, footpaths often have uneven surfaces caused by tree roots, soil subsidence, and repeated vehicle movements at driveways. Also people travelling along footpaths are often unable to be seen by people leaving properties due to high fences or vegetation obscuring views. These physical factors make footpaths unsuitable for use by people travelling at more than walking speed on cycles and powered LITDs. Even pedestrians are sometimes endangered by people driving out of properties. Crashes and near misses of this type are probably greatly under-reported.
96. In addition, the nature of pedestrians and their activity makes footpaths unsuitable for sharing with most vehicles. People walking often change direction or stop suddenly. Sometimes they stop to talk with others or to look at something such as shop windows, gardens or views. Children, who may be exploring or playing or even just accompanying adults, tend to be particularly unpredictable in their movement as are dogs that are being exercised.
97. These are intrinsic characteristics of walking that make it hazardous for pedestrians to share footpaths with vehicles, users of which are usually much less able to stop or change direction. The speed at which people walk and are able to walk varies considerably. Some are unable to see others approaching them from in front or are unable to hear them approaching from behind. Some have cognitive impairments that make them unable to cope with complex situations such as posed by being approached by fast moving vehicles. Others do not have the agility or motor skills necessary to move out of the way of people riding vehicles. These inabilities are often invisible to other users. Mixing this type of road user with those who are able to ride vehicles is a recipe for conflict, inconsistent with the Safe Systems approach.

98. This is not the only inconsistency between the ASP proposals and NZTA's stated principles, aims and methods. Another one is the mismatch between NZTA proposing all ages cycling on footpaths and its principles of provision for cycling (see <https://www.nzta.govt.nz/walking-cycling-and-public-transport/cycling/cycling-standards-and-guidance/cycling-network-guidance/cycle-network-and-route-planning-guide/principles/hierarchy-of-provision-for-cycling/>) where it says that conversion of footpaths into shared paths should be the last option considered because such facilities may be unsuitable for cyclists and compromise the footpaths for pedestrians. We presume this was assuming any footpath would be physically brought up to shared path standard so the idea of cycling on ordinary footpaths wasn't even part of the hierarchy of provision.

Approaches to Managing E-scooters and other LITDs in Other Countries

99. A number of other countries have also struggled to quickly adopt legislation that keeps pedestrians safe and feeling safe while allowing safe use of powered LITDs. Many are scrambling to adopt workable rules and some are changing the ones they initially promulgated. Two examples are
- a) France initially took a permissive approach to e-scooters but has since prohibited their use on footpaths except at walking speed in designated areas (<https://www.bbc.com/news/world-europe-50189279>, 25/10/2019)
 - b) Singapore also initially allowed e-scooters and other powered LITDs on footpath but has since banned them from footpaths (https://www.lta.gov.sg/content/dam/ltagov/getting_around/active_mobility/rules_public_education/rules_code_of_conduct/pdf/where_devices_are_allowed_motorised_pmd_ban.pdf) because of unacceptably high conflict between users. They can still be ridden on cycle paths.
100. Australia generally does not permit e-scooters to be used (Queensland is an exception) although Lime is attempting to persuade various other States to authorise their use.
101. In correspondence with Victoria Walks, Lime has proposed a 5 point framework for use of e-scooters in Australia that includes
- 'Restrict e-scooter riding to roads, bike lanes and bike paths – and age limit to 18 years and above. E-scooters should be banned from footpaths and only ridden by adults to ensure safety and maximise pedestrian amenity'.* ([http://www.victoriawalks.org.au/Assets/Files/The%20future%20of%20e-scooters%20in%20Victoria%202020%20\(1\).pdf](http://www.victoriawalks.org.au/Assets/Files/The%20future%20of%20e-scooters%20in%20Victoria%202020%20(1).pdf))
102. This is dramatic change in position by Lime, perhaps seeking to address the negative impacts its disruptive technology and business model has had on pedestrians and the quality of life in urban areas.
103. The United Kingdom does not allow e-scooter use on any part of the public road system (<https://edition.cnn.com/travel/article/electric-scooter-bans-world/index.html>, 22/11/2019). Germany requires them to be used only in cycle infrastructure or on the road (OECD/ITF 2020). In Spain they can no longer be used on footpaths (<https://www.thelocal.es/20191007/new-laws-spain-plans-crackdown-on-electric-scooters>, 7/10/2019). North America does not have consistent laws concerning where e-scooters can be ridden, these being determined at state or province and city level.
104. In the UK people must be at least 14 years of age to ride e-bikes (Lieswyn et al, 2017) while in Denmark it is 15 (OECD/ITF 2020). In many jurisdictions where age limits exist for riding e-bikes, they are in the 14-16 year old range (Lieswyn et al, 2017). In Germany, people have to be 14 to ride e-scooters (OECD/ITF). Lime requires that users of its e-scooters be at least 18 years old.

Mode-Switching Impact of Micro-mobility

105. It is often contended that e-scooters and other micromobility devices will assist in decreasing traffic congestion and pollution. Intuitively, it seems plausible but research on this matter is scant and limited to e-scooters.
106. The reality has been that e-scooter trips replace far more walking, cycling or public transport trips than they do car trips. In a survey on shared e-scooter use in Paris, 30 percent of “local” users (residents, as opposed to visitors) said they would have made their last trip using public transportation had shared e-scooter services not existed. The Paris survey showed that almost half of shared e-scooter rides by locals replaced walking. Just 8 percent replaced trips made by car. (<https://www.wired.com/story/paris-escooters-regulation/>, 8/11/2019).
107. During a pilot period for e-scooters in Portland, Oregon, only a third of local users said that their last e-scooter trip replaced a car trip (<https://www.portlandoregon.gov/transportation/article/700917>, 22/10/2018). Similarly, in Spokane, Washington State, only 24% of rides replaced car trips (Quinn-Hurst, 2020) and in Seattle, Washington State, the proportion was 30% (Lime 2019a).
108. In Brisbane, of the first 1 million trips by Lime e-scooters, only 19% of users would have otherwise used a car for their trip (Lime 2019b). In New Zealand, Lime’s figures for Auckland in 2018 showed that only 22% of trips taken during the first 75 days of operation replaced car trips (Lime 2019a). That result was consistent with that of another survey (non-random) for which most respondents were from Christchurch, in which only just over a quarter of trips replaced car journeys while almost 60% replaced trips that would have been made by active modes (Fitt and Curl, 2019). Results for Lime’s scooters for 2019 appear not to have been published yet. Also, similar surveys do not appear to have been undertaken for other types of powered LITDs presumably because they are far less common than e-scooters.
109. Not only might e-scooters and other powered LITDs make little difference to the level of congestion, especially if any initial decrease is offset by suppressed demand being expressed, but a move to these devices is likely to decrease the net level of health-promoting exercise people get from walking and cycling. Active transport is likely to decrease.
110. Using life cycle analysis methods, it has been estimated that for e-scooters to have a positive environmental effect on the transport system in the USA half of the trips taken would have to replace car trips (Johnson, 2019). So it is very questionable as to whether e-scooters make a positive environmental contribution in the New Zealand context.
111. The majority of people do not think that footpaths are an appropriate place for using e-scooters (Fitt and Curl, 2019). At the time that consultation on the Road User Rule 2004 was undertaken, there was strongly negative view of riding the LITDs that existed at that time (mostly unpowered) on footpaths, including from a portion of LITD users, and the original proposal to limit them to footpaths was changed in the final version of the rules, allowing wheeled recreational devices to be used on either the footpath or the roadway.

Impact of Micro-mobility on Government Goals

112. The average distance travelled per trip on share e-scooters was 1.6km in Spokane, Washington (Quinn-Hurst, 2020). That is an easy 15-20 minute walk, so they are likely to be decreasing the incidental exercise people are getting with potential negative health consequences.
113. There should be no misconception about powered LITDs – e-scooters and most other powered, light individual transport devices require minimal physical effort – they are not active transport. Users are able to ride them pretty much from door (and sometimes even desk) to door so trips using them may involve even less walking than do most car trips. The aim of the Accessible Streets package to encourage active modes is questionable when it will discourage people from walking or decrease the necessity for them to do so. No consideration appears to have been given to this, not even the economic cost (mostly through health disbenefits) of people walking less.
114. Towns and cities will not be made more vibrant and liveable if footpaths are made unpleasant places for pedestrians. Having people out walking, socialising, shopping or exercising, not

requiring them to be constantly vigilant for vehicles coming past them at speeds that make them feel unsafe, or at least uncomfortable, is what contributes greatly to vibrancy and liveability.

115. It is also questionable as to whether the package will make walking more efficient. Although Proposal 6d (pedestrians walking straight at an intersection with a side road being prioritised over turning traffic) could decrease time spent waiting at such intersections, this may be offset by pedestrians having to be more cautious as they interact with vehicles on footpaths.

Footpath Use a Temporary Measure?

116. The Minister implied to Living Streets Aotearoa in her letter of 4/10/2019 (Annexure 2) that allowing vehicles like e-scooters to be used on footpaths was being seen as a temporary measure necessary until streets are made safe enough for them to be used elsewhere.
117. However, it usually takes years to undo bad regulation. For example, the left turn give way road rule was introduced in 1977 but not repealed until 2012 despite it being recognised years earlier that it was less safe than the rule it replaced. If LITDs and bicycles ridden by people of any age, are allowed on footpaths for that long, the negative effects on walkers and mobility device users will affect a whole generation. We need only look at cycling to see the long-lasting impact of not designing our transport system for that mode and of having a generation which thinks that cycling is much more dangerous than it actually is.
118. Proposals 1 and 2, in particular are bad regulation not only because of the negative impact it will have on pedestrians but also because of the way in which pedestrians have not been involved in formulating the proposals.

An Alternative Approach

119. Instead of the approach taken in the ASP, we believe that the recommendations of the International Transport Forum (OECD/ITF 2020), of which New Zealand and about 60 other countries are members, should be adopted. The ITF recommends:

‘Where pedestrians do not feel safe on sidewalks, the number of people walking will decline. The use of micro-vehicles on sidewalks should be banned or subject to a low, enforced speed limit. Authorities should create a protected and connected network for micromobility, either by calming traffic or by redistributing space to physically protected lanes for micro-vehicles. This network should be more attractive than sidewalks; design guidelines for wide and protected cycling infrastructure should be developed. For its rapid, low-cost development, light separation on busy streets and traffic filtering on residential streets are proven techniques. Speed limits for all motor vehicles should be no higher than 30km/h where motorised vehicles and vulnerable road users share the same space.’

120. It goes on to say that the focus should be on making users of motor vehicles accommodate other users through various measures. This is what is largely missing from the first three proposals in the ASP.
121. We advocate making streets safe for all - footpaths for people on foot or using mobility devices, a micro-mobility and bicycle zone and, if there is still space, a zone for cars and similar motor vehicles. Walking, LITDs and bicycles, coupled with public transport for longer journeys, are the way of the future in urban areas – give them priority in redesigning and reallocating street space.
122. We contend that e-scooters and other LITDs should have to be used on the road and be prohibited from being used on footpaths. Separated paths should be made for them where roads cannot be made safe. Lower speed limits would help to make many streets safe and feel safe to riders without needing to create new infrastructure such as special lanes.
123. Parking of LITDs should also have to be in designated areas, generally off the footpath to avoid the danger and inconvenience that parking them on footpaths causes to pedestrians,

particularly blind ones and wheelchair users.

124. The OECD/ITF (2020) report stated

'Pedestrian safety is negatively impacted where micro-vehicles are used and parked on sidewalks. Wheelchair users and the blind are particularly affected. In their most recent report, the City of Santa Monica (2019b) found that "these user behaviours contribute to pedestrian discomfort and are currently infeasible to eliminate through field enforcement due to dispersion and ongoing movement of the devices.'

Rules but no Policy

125. There has been no public process of policy development preceding this proposed Rule change. The ASP is a policy tool (rules or regulations) not a policy and as such should only be developed once there is clear policy in place.

126. The NZTA summary of Lieswyn et al's (2017) report on issues concerning electric bicycles and other low-powered vehicles, said

'The authors recommend that the next step could be to consider the proposed framework, and issues and recommendations included in the research report, as a basis for developing government policy on low-powered vehicle use in New Zealand. This policy-making exercise could then be followed by rule making.'

127. Instead, the government has jumped directly to rule making. We believe that changing the fundamental use of footpaths to permit users for whom the infrastructure was not designed is not only a matter of policy but also should be subject to the scrutiny of Parliament not solely left to the Executive to determine. Without well thought out policy, rule changes are likely to be ad-hoc and result in unintended negative consequences.

128. The RCA Forum Shared Footpaths Working Group report (2017) included the following principles for developing policy to respond to competing demands for road space:

- a) That **accessibility for all and safety for all must be central to the decision-making process.**
- b) Any regulatory regime needs to **protect the transport choice for those who have the least amount of transport choices/options.** Infrastructure must be designed for all users, including potential users who currently may fear using it due to perceived or real safety concerns;
- c) That any policy response/regulatory regime must provide an analysis of how the proposed rules meet the **United Nations Convention on the Rights of People with Disabilities;**
- d) That an **evidence base regarding the use of footpaths** needs to be progressed in order to develop the level of sophistication which the car-related component of our transport system currently has. Co-development between government agencies with a transport mandate and advocates is the best approach;
- e) That practical and achievable **enforcement** is required, as is a robust **monitoring programme** in order to understand the impact of any new rules (and therefore any amendments should the regime not be working);
- f) That there needs to be a **hierarchy of footpaths** (whereby the footpath on the quiet suburban street with low traffic volumes is still very much the realm of the pedestrian) which is based on the assumption that the footpath is primarily infrastructure which is designed for pedestrians;
- g) That **co-design** – whereby NZTA, local government and advocates determine the policy response – is best practice and should be adopted as the preferred method for this work.

Benefit-Cost Analysis

129. Well into the the submission period for the ASP, a Benefit-Cost analysis paper appeared on the consultation webpage. We were not notified of this by NZTA but found out about it through our contacts. This is an extraordinary manner in which to run a consultation.
130. Besides this procedural impropriety, the Benefit-Cost analysis is deeply flawed. On the one hand it misrepresents some of the literature reviewed. In particular, the Trevelyn and Morgan (1993) paper was about pedestrian and cyclists in busy central city shopping areas with high numbers of pedestrians, more akin to our shared spaces or Cuba Mall not footpaths or even shared paths. Some still had buses going through the areas. Rider behaviour is likely to be different in such settings from that on relatively quiet urban footpaths.
131. On the other hand, the Benefit-Cost analysis seems to have attributed benefit to increasing the number of people riding bikes which it assumed would be a consequence of allowing all ages cycling on footpaths (an assumption which is not borne out by the Australian experience – see paras 78-82 above) but did not attribute any cost to the decrease in frequency or number of people walking which is a predictable consequence. This cost arises from both the negative health impacts of decreased walking and the negative environmental impacts of increased vehicle-kilometres (vkm) travelled due to some proportion of pedestrians turning to car use. The health cost alone is set at \$2.70 for each person-kilometre not walked (NZTA Economic Evaluation Manual SP11 template worksheet).

Conclusion

132. On account of the negative effects on population health and well-being, particularly of older people and disabled people, nothing should be done that is likely to deter people from walking. To do otherwise would be contrary to the description of road safety given in the New Zealand Road Safety Strategy (quoted in para 14 above), which the Government has committed to. Not only are there direct social and economic opportunity costs of discouraging people from walking but there are also environmental and congestion costs if those people who would have walked turn to motorised vehicles to get around.
133. In our view, the ASP contravenes the UN Convention on the Rights of Persons with Disabilities and is also contrary to the guidelines for creating Age-Friendly cities.
134. Besides not taking account of relevant research on pedestrian and disabled pedestrian safety and feelings of safety and not carrying out any primary research on these, proposals 1-3 of the ASP are not supported by most of the limited evidence that is available on the subject of footpaths being used by multiple types of vehicles and users.
135. In addition, the ASP is a set of Rule changes that has been put forward without clear Policy having been developed to achieve the stated goals of the package.
136. Despite the concerns expressed to this point, the remainder of this submission comments on the proposals specified in the consultation document, most of which we support.

PART 2

Proposal 1

137. This proposal is to change current vehicle and device definitions and to create new categories to better regulate:
- new and emerging devices, and
 - where and how they're used.
138. The changes seek to reflect current use of vehicles on footpaths, shared paths, cycle paths and in cycle lanes. But current usage is largely a consequence of the existing rules. For example wheeled recreational devices (WRD) are used on footpaths and shared paths because they are not permitted to be used in cycle lanes. Some are used on roads, as is permitted, but generally speed limits are too high on roads for this to feel safe to most WRD users.
139. We suggest the changes should reflect the goal of providing space and conditions on the road for all users to feel and be safe above all else. As far as pedestrians are concerned, they fail to do this in their current form.
140. We support changing the vehicle definitions. We agree that wheel size is a poor proxy for the important factors determining safety. However, the continued reliance on power output is a major defect of this proposal.
141. Lieswyn et al (2017) observed that speed and power are only loosely related. Weight, gearing, internal and external friction and the amount of power allocated to different purposes all help determine the relationship and so it is likely to vary considerably between vehicles. For example, Lieswyn et al (2017) pointed out that much of the power of self-balancing devices such as Segways is used to maintain balance rather than in propulsion of the device.
142. Refinement of the design of devices and technological advances are, in future, likely to lead to the relationship between power and speed becoming weaker still and so we will likely end up again in the situation where new devices do not fit sensibly into any of the categories being proposed or they do so but are capable of speeds never intended by regulators.
143. We propose that the categories of devices be based on speed potential and mass since it is the speed and mass that largely determine the severity of injury resulting from collisions. Lieswyn et al. (2017) also recommended that low-powered transport devices be classified on the basis of maximum speed, not power output, because
- 'speed is more directly related to safety outcomes than power'.*
144. We think mass should also be part of category definitions because it is the kinetic energy transfer involved in a crash that largely determines the severity of injury of participants (as well as how, and on what, a pedestrian or rider lands). Thus, limiting the speed and mass of any vehicles mixing with pedestrians is particularly important. The OECD/ITF (2020) citing Khorasani-Zavarehet al., (2015) said that the speed and weight together determine the kinetic energy of a vehicle, which correlates with the risk of fatal or serious injuries. It proposed a classification system based on speed and mass.
145. We note that none of the vehicles to which the existing and proposed rules are intended to apply have been designed with the sort of attention to minimising injury resulting from a collision with a pedestrian as has been put into car design. Therefore, injuries may be more severe than expected simply by extrapolating injury severity experienced in crashes involving cars and pedestrians.
146. Lieswyn et al (2017) went onto say
- 'Maintaining the status quo (no motor cut-out speed) will result in continuing development of faster e-bikes, without any regulations or standards regarding vehicle safety or use'*
- and

'Maximum motor-assisted speed is an easier criterion to measure and enforce than maximum power. It directly affects safety and is regulated in all other jurisdictions reviewed for this research.'

147. Power is not an easily enforceable measure. Measurement of power requires specialised equipment not carried by Police. Relying on manufacturers' statements about the power rating of a device is inappropriate (Lieswyn et al, 2017) because of incorrect statements being made and because power can be modified after sale.
148. In contrast, speed can be assessed by simple measurements of distance and time taken to traverse the distance. Speed measuring (radar and lidar) devices may also be useful although the ones used by the Police may not be accurate enough at low speeds to be useful. Mass can also be relatively easily assessed.
149. So we propose that, instead of the 6 categories proposed in the package, there are the following categories
 - a) pedestrians (including people in unpowered wheelchairs)
 - b) unpowered vehicles, reliant purely on human power or gravity (i.e. no form of motorised propulsion at all)
 - c) powered vehicles capable of travelling on the flat at no more than 6km/h by design, i.e. their combination of motor, gearing and other features do not enable them to go faster, rather than being able to go faster but being controlled by mechanical or electronic speed limiters
 - d) powered vehicles capable, by design, of travelling on the flat at more than 6km/h but no more than 30km/h and having unladen mass of no more than 50kg
 - e) powered vehicles capable, by design, of travelling on the flat at more than 30km/h and having unladen mass of no more than 50kg
 - f) unpowered cycles ridden by children 10 years old and younger
 - g) unpowered cycles ridden by people older than 10 years.
150. Any other vehicles (i.e. those capable of travelling more than 6 km/h and weighing more than 50kg as well as those capable of travelling at more than 30km/h but weighing less than 50kg would be considered to be motor vehicles and would be covered by at least some but not necessarily all of the rules covering them. An explicit statement of this needs to be made because otherwise the confusion created by vehicles being both powered vehicles weighing less than 50kg and being motor vehicles because they have a motor will not be solved. This would provide strong incentive for suppliers to put onto the market only devices which are lighter weight or incapable of high speeds, contributing to a safer transport system.
151. Categorising road users and vehicles in this way would enable appropriate rules to be applied to the categories of vehicle in ways that are more appropriate than is proposed.
152. The requirement for devices to be speed limited by design rather than being by hardware or software speed limiters is important because, as Lieswyn et al. (2017) pointed out, speed limiters can be readily tampered with. The rules should probably also include a prohibition on tampering any hardware or software that would enable a higher speed than intended by the original manufacturers' design otherwise devices may not be covered by the appropriate regulations.
153. Our proposal is not too different from the recommendation of the OECD/ITF (2020) that 35kg and 25km/h be the thresholds for device categories. The exact threshold mass and speed values might be best set taking into account the international regulations and industry standards while still putting safety at the forefront.
154. Lieswyn et al (2017) suggested that the motor cut-out speed should be used as a threshold

because that is an objective feature of the device whereas the actual speed a device is ridden at depends on both the device and the user. This has merit in our view so perhaps the speed thresholds for the categories we have proposed could be the motor cut out speeds.

155. As to where the different categories of device should be allowed to be used, we find the proposed rule very unsuitable. Allowing all the devices that are subject of the ASP to be used on the footpath is akin to allowing mopeds and motorcycles to be used in cycle lanes. Their potential speed is too high and their mass is too much greater than people riding bikes for this to be an approach that would keep cyclists safe and feeling safe. It would likely put people off cycling.
156. Besides the comments that we have made earlier, we add that Lieswyn et al (2017) advised that

'No overseas rules permitting e-bikes on footpaths were found and such use is not appropriate.'

They said they did not recommend e-bikes be allowed to be used on footpaths and did not anticipate them being allowed to be so used. Where the proposal to allow them to be used on footpaths came from is unknown but it can be speculated that it is motivated by wanting to treat them similarly to bicycles. The OECD/ITF agreed that low-speed e-bikes (motor cut out at 25km/h) should be regulated in a similar way to bicycles and should not be used on footpaths.

157. As to where the different categories of users and devices should be allowed, this is the part of the proposal that we find most unsatisfactory. Allowing all the proposed categories (as stated in the ASP) to be used on footpaths turns footpaths into shared paths even though they are not designed as shared paths (see comments earlier in paras 89-94).
158. We suggest that appropriate rules would include that only the following categories of users/vehicles be allowed to be used on the footpath:
- a) pedestrians
 - b) unpowered vehicles
 - c) powered vehicles capable of travelling at no more than 6km/h on the flat
 - d) unpowered cycles ridden by children aged 10 years or younger and adults who are qualified¹ cycle trainers and are training the 10-years-old and younger children to ride.
 - e) unpowered cycles ridden by people delivering mail
159. Powered vehicles weighing less than 50kg and capable of travelling greater than 6km/h but no more than 30km/h (or having a motor cut-out speed less than 30km/h) and cycles would be permitted to be used on shared paths, cycle paths, in cycle lanes and on the road and be considered as cycles. Unpowered vehicles would also be permitted to be used on these same paths and lanes as well as on the footpath.
160. Powered vehicles weighing less than 50kg and capable of travelling at (or having a motor cut out speed of) more than 30km/h on the flat would be required to be used on the road and not on shared or cycle paths or in cycle lanes. Users would also have to be licensed and the vehicles registered.
161. We also recommend that e-bikes and powered vehicles, capable of travelling at more than 10km/h not be permitted to be used, on public land, by children 16 years old and younger. The

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Qualified here would mean 'have undertaken the Pedal Ready 3-day training course or equivalent or have achieved the National Certificate in Recreation and Sport - Coaching and Instruction (Cycle Skills Instructor) or equivalent'. We do not support other adults being permitted to ride on the footpath accompanying children because guidance or supervision can be provided by staying within voice contact while the adult is riding on the adjacent roadway and because adults riding on the footpath may normalise that behaviour in the eyes of children and doesn't teach them that it is something that is only done by children.

speeds and acceleration possible with them are too high to be safe for people with such limited experience at controlling a vehicle in public space.

162. The categories we propose are capable of including remotely controlled and autonomous vehicles also (it is expected that most would fall into the powered vehicle, less than 50kg, capable of travelling at more than 6km/h but no more than 30km/h. However, it is recommended that remotely controlled and autonomous vehicles be in a separate category of their own because they may pose a different level of risk to other road users from that posed by the above categories of vehicles. No account of them appears to have been taken in the ASP.

Proposal 2

163. This proposal aims to specify some behavioral rules for use of footpaths. We support most parts of this proposal including those that require people to:

- behave in a courteous and considerate manner,
- travel in a way that is not dangerous for other people using the footpath,
- give right of way to pedestrians.

These are already mostly included in Road User Rule (2004) 11.1(4) and 11.1(5).

164. We also support the proposed rule limiting the width of any vehicle being ridden on a footpath to no more than 750mm, with exceptions possible for wheelchairs and, on a case by case basis, for other vehicles (e.g. if somebody was of a size that they needed a 900mm wide mobility scooter). However, this is not a behavioural rule and would be better included in the device category definitions (i.e. part of Proposal 1).
165. However, the proposed rule that users be allowed to travel at up to 15km/h is completely unsuitable. This is an inappropriate and unsafe speed for use of the footpath. In the rules we proposed under Proposal 1, above, we said 6km/h should be the maximum speed on the footpath. That is a fast walking speed. Few people can sustain it for long.
166. 15km/h is way in excess of what most joggers run at. Those capable of it are unlikely to run on footpaths because of the dangers inherent in doing so from uneven surfaces, at driveways, and from other users.
167. Not only is 6km/h as a maximum speed for children, 10 years old and younger, riding on the footpath probably acceptable to most pedestrians, provided the other rules are also abided by, but it is also a speed at which children should be able to ride a bicycle without stalling and losing balance - if they cannot then they are not ready even for riding on the footpath. 6km/h is also a speed that enables them to avoid the most significant danger on footpaths – motor vehicles exiting driveways. It is a safe and appropriate speed for the environment.

Proposal 3

168. This proposal aims to clarify who's allowed on shared paths and cycle paths and introduces behavioural rules they need to follow when using the paths.
169. We support these matters being clarified and codified because there is currently considerable conflict between different users. Most conflict arises from people riding vehicles too quickly along shared paths making it uncomfortable and dangerous for walkers. There is also conflict from pedestrians not keeping left and moving less predictably than do people on vehicles.
170. We agree there should be a speed limit on paths whether they be shared paths or cycle paths.
171. However, the speed limit should match the intended use of the path and the likely mix of users not the speed limit for motor vehicles on the adjacent roadway. The latter is irrelevant to the safe and comfortable use of the paths. Cycle paths and shared paths should have different speed limits.

172. Cycle paths should be defined to be primarily for utility transport purposes for vehicles under 50kg in unladen weight. They should not be used by pedestrians except in places where nearby footpaths or shared paths do not exist and in those cases pedestrians should give way to riders. If the cycle path is beside a road there should also be a separate footpath. The speed limit should be one which is safe and appropriate for the users and the path.
173. Generally, given the overall lack of protection from injury that riders have, we would suggest that 40km/h should be the maximum allowable speed on cycle paths (separated from the roadway). Only fit and elite riders can sustain higher speeds (e.g. Dylan Kennett won the 2019 Tour of Southland, stage 6, 13km time trial in 16 minutes 17 seconds which equates to 48km/h) but they should be riding on the road at that speed .
174. Setting higher speed limits is likely to encourage the marketing, purchase and use of lightweight vehicles capable of higher speeds and this would increase the range of speeds encountered on the paths, decreasing the safety and the feeling of safety for users, especially those who are relatively inexperienced riders, which may in turn encourage the latter to ride on footpaths instead or not ride at all.
175. Shared paths should be defined to be primarily for leisure purposes and not intended for high speed use. Pedestrians should have priority with riders giving way to them. The speed limit should be set for the safety and feeling of safety of pedestrians. Two alternative approaches are suggested:
- a) set a speed limit for riders of 10km/h (slightly higher than on footpaths on account of the greater width of shared paths) that applies to the entire shared path, or
 - b) set a speed limit for riders of 20km/h but require riders to pass pedestrians at no more than 10km/h.

In both options, we also propose that

- i. riders pass pedestrians no closer than 1m, comparable to the rules being proposed for motorists passing riders on roads but acknowledging the greater frailty of some walkers who use shared paths,
- ii. riders ring a bell when approaching pedestrians from either front or rear. This would be of benefit to vision-impaired- and sighted-pedestrians although not to completely deaf ones. The bell would have to meet to-be-specified performance standards of audibility.

Reinstatement of mandatory fitting of bells to bicycles has been called for over many years and we support it but it should apply to all lightweight vehicles covered by the categories proposed.

176. This could be complemented by also having rules that require:

- a) all users to keep left except when passing other users
- b) all users to move off the path when stopped
- c) leashes (if used) for animals to be highly visible

in addition to those already covered by Road User Rule 11.1A(2) to use the path in a careful and considerate manner and not in a way that constitutes a hazard to other users.

177. When a path is popular with or intended for use by both utility transport riders and pedestrians, the rules of shared paths should take precedence.
178. For both shared and cycle paths there should be a width limit applied to the vehicles using them. We suggest the limit should be 'no more than half the width of the path' with exceptions made for maintenance and repair vehicles contracted or owned by the RCA.
179. There also needs to be a definition of 'giving way' which currently seems not to be defined in the Road User Rules or Land Transport Act. There is a need to clarify that it doesn't require pedestrians or riders to be turning.

180. We support RCAs being able to declare that a path is a shared path or cycle path by resolution. However, there should be nationally set guidance about the criteria to be used for deciding this. The criteria might include the purpose of the path, the suitability of nearby roads for the use of bikes and the other vehicles that are the subject of this consultation, the observed number of pedestrians, children and disabled users etc.

Proposal 4

181. We support the proposal to allow transport devices to use cycle lanes and paths. Under the categories we propose above, all powered vehicles under 50kg in unladen weight and capable of speeds of more than 6km/h but less than 30km/h would be permitted to use cycle lanes. Cycle lanes should have a speed limit of 30km/h. Any vehicle weighing less than 50kg capable of higher speeds would not be permitted in cycle lanes but could be used in the motor traffic lane of the roadway.

Proposal 5

182. We support requiring lighting and reflector requirements for powered transport devices used at night but believe this should be extended to all hours of darkness and also apply to their use on shared and cycle paths, in cycle lanes and on the roadway. We believe this should also be extended to unpowered transport devices when used on the on cycle paths, in cycle lanes and on the roadway. Lights should not be used on footpaths.
183. However, because affixing lights to some devices would result in them being very close to the ground and not readily visible to other road and path users, we suggest that users be able to substitute front and rear facing lights worn on the body at least 1m off the ground for those mounted on the vehicle itself.

Proposal 6

184. We support the proposed rule changes:
- a) allowing cycles and transport devices to:
 - i. ride straight ahead from a left turn lane
 - ii. pass slow-moving vehicles on the left.
 - b) clarifying that turning traffic must give way to all people using separated lanes, including buses, if those people are travelling straight through at an intersection.
 - c) giving greater priority to people on footpaths and shared paths when they're crossing side roads with minimum markings (two white lines) (this is proposal 6d).
185. However, we request that (c) be made nationally consistent by giving priority to pedestrians crossing side roads over traffic turning into or out of those side roads. If this was a nationally consistent rule then there would be less need for any markings other than as a visual cue for road users. This would then be comparable to many other rules which road users are expected to know and abide by without having any particular indications at the locations where they apply. For example, both before and after the 2012 change to the 'give way to right turning traffic when turning left' rule change there were no signs or markings telling road users what the rule was.
186. We believe that leaving it to local RCAs to decide whether or not to implement such priority measures will result in considerable inconsistency across the country and make it harder for road users to understand and abide by, possibly making for less safe road use than exists now.
187. If markings are required then RCAs should be given a very limited time, say 2 years, in which to install them. To assist RCAs, the cost of the initial markings should subsidised 90% from the National Land Transport Fund but thereafter the cost would receive the usual Financial Assistance Rate that applies, if any.

188. Also, if markings are deemed essential then two parallel solid white lines 2m apart would be a basic marking. It might usefully be supplemented by dragons/sharks teeth facing the on-coming traffic in each lane.
189. Any concern that traffic leaving the side road to join the main road would not be able to see oncoming traffic could be overcome by allowing drivers of the vehicles on the side road to proceed and pause over the area where pedestrians are intended to walk, after the drivers have first stopped to allow any pedestrians to cross the side road. This is likely to be necessary at a minority of intersections. Markings would be useful for showing drivers and riders leaving a side road where to stop to let pedestrians cross.

Proposal 7

190. We support mandating a minimum overtaking gap (on the road) for motor vehicles overtaking cycles, transport devices, horses, mobility devices and pedestrians but believe the threshold speed should be 30km/h, comparable to what is required at roadworks where people are actively working, not 60km/h, i.e.
- a) a 1 metre passing gap when the posted speed limit is 30km/h or less
 - b) a 1.5 metre passing gap when the posted speed limit is over 30km/h.
191. We believe a similar rule should apply to vehicle riders on shared paths passing pedestrians (see para 175 above).

Proposal 8

192. Parking on berms often compromises pedestrian safety and access along footpaths as vehicles often overhang the footpath or block it completely. Parking on berms sometimes also involves driving over footpaths putting stress on the footpath surface that wasn't intended, resulting in uneven or cracked surfaces which pose another hazard for pedestrians.
193. Thus, we propose that there should be a general prohibition on parking on berms but with exceptions possible and at the discretion of RCAs.
194. This seems to be the implication of current Road User Rule (2004) 2.14 which states
- 'Driving on lawn, garden, or other cultivation A driver must not drive a motor vehicle on a lawn, garden, or other cultivation adjacent to, or forming part of, a road.'*
195. Having to have signs indicating the prohibition is both expensive and creates visual clutter. A general prohibition greatly decreases the need for signs. Expecting people to find out where exceptions apply by consulting a register, even if it is on-line, is unreasonable. Where there is not a uniform rule, there is a general expectation that if something is not allowed then that is either indicated at the location where it is not allowed or locations where exceptions apply are indicated. In this case, markings may be more appropriate than signs to indicate where parking is permitted on the berm. As an example, a blue dashed line on the kerb surface facing the roadway, spaced every 5m or 10m to show where it is allowed would be both adequate and relatively cheap).

Proposal 9

196. We support requiring road users to give way to signalling buses pulling out of bus stops in urban areas, when the speed limit is 60km/h or less. This will help to make bus travel quicker and encourage more people to use it as a consequence. If this gets more people out of the habit of driving their own car, this will indirectly benefit pedestrians and users of the other vehicles that are the subject of this consultation. It should also apply to buses merging with traffic when the number of traffic lanes decreases.

Thank you

PART 3

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Annexure 1 .

Examples of the importance of footpaths to pedestrians and the impact on them of e-scooters, cycles and other light individual transport devices being ridden on footpaths

- a) *"In the last two weeks, I have had four near misses from e-scooters walking from Upper Willis St to Wellington railway station between 5.30 and 6.00 pm. I did not hear them, and on one occasion was crossing the busy Boulcott St intersection (with the green pedestrian light) and an electric scooter came sailing through the intersection against the lights and I was utterly freaked. I am now slightly nervous on my walk to the railway station – it should not be this way."*
- b) *"As a keen walker, I like to be able to enjoy the outdoors without having to be alert every second to the likely need for stepping aside quickly for faster traffic. I like to have my little thoughts, and to listen to my Spanish lesson tapes. Or stop to chat with friends or fellow walkers."*
- c) *"I no longer use the shared Hamilton river walkways as adults on mountain bikes use them as race tracks."*
- d) *"Currently I walk around the waterfront in Auckland where the footpath is a shared space between pedestrians and cyclists. In my view it is a dismal failure for both users and as a pedestrian I feel very unsafe due to the speed and lack of consideration of most cyclists. I also cycle and have used this shared cycleway. After one use of it I felt that I could not ensure the safety of the pedestrians without dismounting often."*
- e) *"Over the past 5-10 years, my mother and my mother-in-law, both in their mid-late 80s, have had their pleasure diminished and/or their walking routes curtailed after being overtaken without warning by speeding cyclists."*
- f) *"Imagine taking a child along a walkway. You want the child to be able to run forward, see a bird, stop and watch it for a while, then run to the other side of the track to look down at the stream, and then spot another bird and follow it to the other side of the track, and then be distracted by an interesting fern, and so on. That behaviour is not possible if there is a risk that a fast cyclist will come around the corner."*
- g) *"I am 71 years old and for over ten years have relied on public transport and walking for my mobility... the alarming experience of being overtaken from behind at close quarters and without the slightest warning by a cyclist travelling at excessive speed is one to which no-one should have to be subjected."*
- h) *"I am elderly, have hearing difficulties, but my biggest problem is my personal balance... The footpath is now the only place left for me to walk safely as all walkways are used by cyclists."*

Annexure 2.

Letter dated 4/10/2019 from Julie Ann Genter, Associate Minister of Transport, to Ellen Blake, Vice President of Living Streets Aotearoa

From: *Zara Awatere* <Zara.Awatere@parliament.govt.nz> <mailto:Zara.Awatere@parliament.govt.nz>>
Date: Fri, 4 Oct 2019 at 14:58
Subject: M192293 Reply from Hon Julie Anne Genter, Associate Minister of Transport
To: windynell@gmail.com <mailto:windynell@gmail.com>

Tēnā koe e Ellen

On behalf of Hon Julie Anne Genter, Associate Minister of Transport, please find below a reply to your correspondence.

Tēnā koe e Ellen

Thank you for your letter dated 21 July 2019 regarding e-scooters on the footpath and disabled people as pedestrians, on behalf of the Footpaths for Feet Coalition. Please accept my apologies for the delay in responding.

I share your view regarding the need to ensure that footpath users – including people with disabilities – can both feel and be safe when using our footpaths.

As you are aware, the Accessible Streets regulatory package is a substantive review of the rules governing the use of footpaths and other shared spaces. The proposed rule changes are designed to increase the safety and accessibility of our footpaths and cycle paths. While the current rules governing the use of footpaths anticipate their mixed use, the proposed rule changes respond, in part, to the increasing rate of use of various forms of vehicles on our streets and footpaths.

I share your concerns that disabled people are particularly vulnerable footpaths users and this is being given careful consideration in the development of proposals for change. Officials have already engaged with some disability representative groups and I can assure you that further engagement with representatives of disability groups is being planned as an essential part of consultation. Any proposed legislative challenges will reflect New Zealand's obligations to the UN Convention of the Rights of Persons with Disabilities and more broadly support the Government's goal to support those with limited mobility and disabilities to engage in society in a full and meaningful way.

In the long-term, changes to street design may allow us to reap the benefits of vehicles like e-scooters, and mitigate their risks. For example, greater provision of wide shared paths or bike lanes on busy streets will separate e-scooter users from fast moving car traffic, as well as people walking on the footpath. However, in the interim it is important that we have a regulatory environment that supports safe and accessible travel for all road users using available infrastructure.

The proposed rules will include:

- enabling wheeled recreational devices – including e-scooters – to be used in cycle lanes and cycle paths. The intention of this rule change would be to encourage faster wheeled recreational devices to move off the footpath, and onto parts of the road where they are less likely to come into conflict with either slow-moving pedestrians or fast-moving vehicles;

- to ensure the safe use of footpaths, we propose to consult on a framework of new rules to govern how vehicles can be used on the footpath.

I welcomed the opportunity to meet with you and other members of the Footpaths for Feet Coalition and appreciated your suggestions for change. Officials are giving these suggestions further consideration as part of the development of the Accessible Streets package.

I note your request for information the NZ Transport Agency relied on its decision to declare e-scooters not to be motor vehicles. The NZ Transport Agency has released this information in response to previous official information act requests. It can be located on the NZ Transport Agency's website at:

<https://www.nzta.govt.nz/about-us/news-and-media/official-information-act/official-information-act-oia-responses/> (scroll down for various items titled 'e-scooters').

Finally, you have requested an explanation of how proposals to reallocate footpath space for use by riders of e-scooters, other non-active motorised devices, and cyclists comply with the UN Convention on the Rights of Persons with Disabilities. I anticipate receiving advice from officials on this matter as part of the ongoing development of the Accessible Streets package. I anticipate making this advice proactively available once Cabinet has considered detailed policy proposals, and to inform public consultation.

At this stage, we anticipate consultation on the Accessible Streets package will begin later in 2019. I have asked officials leading this work to ensure participation of Footpaths for Feet coalition members in this consultation period.

Thank you again for taking the time to write to me about this important issue.

Nāku noa, nā

Hon Julie Anne Genter
Associate Minister of Transport

Ngā mihi koe
Zara Awatere

Hēkeretari Matua | Office of Hon Julie Anne Genter | Associate Minister
of Transport*
Level 6.C Bowen House | Parliament Buildings | Wellington | New Zealand
E: zara.awatere@parliament.govt.nz <<mailto:zara.awatere@parliament.govt.nz>>

Annexure 3.

Accounts of recent experience of a pedestrians being expected to get out of the way.

1. *"What I am finding as a pedestrian is that heavy large cyclists have taken their attitudes from their motoring practices and are now aggressively riding on footpaths and tracks.*

A child or vulnerable adult (old lady with vision and hearing impairment) are the new victims of these aggressive cyclists. They are just skittled by these individuals and groups of cyclists.

[Recently, during level 4 lockdown] I was kicked by a cyclist and abused after he came up behind me in advance of his wife and 2 children. Two meters, for him, meant I should jump sideways onto the road or scramble up a bank. He gashed and bruised my other leg with his peddle. His wife took a photo with her phone and promised I would be in trouble. They fed off their righteous anger and went on their way. I was left with 2 severely bruised and gouged legs. At the age of 64 I don't think Julianne Genter or any other cyclists' advocate should speak for pedestrians."

2. *"I was driving along last night through Raumati and I observed a man on a large motorised (like a wide tyred mo-ped) motoring along on the footpath. I observed that there were 2 older walkers (walking). I saw one of the walkers warn and guide the other walker off the path. The walker had to look behind to be aware that the (electric) vehicle needed them [to] vacate the path to allow his progress."*

3. 'May 2020

Hello,

I'm Carl and I'm Deafblind.

Imagine you are walking down the footpath, you can't see and you can't hear, and your Guide dog has recently retired, so while you wait for a new dog, you are using your white cane.

You have been taught how to get to a variety of destinations, but usually you're taught the only safe route to each place, where you can cross roads using controlled intersections.

Many of these walks include shared walk / cycle paths.

On most trips I get bumped into, pushed aside, on really bad days I get knocked over and even punched.

I remember before lockdown, 1 bad week.

On the Monday I decided to walk to the local Mall using the shared walkway. First a person on an e-scooter crashed into me, lucky for me it was him who flew off the scooter but I was left feeling upset and sore.

I kept walking, but about 20 steps later I was pushed into the fence by a fast person on a bike.

There was grass on one side of me, but they wanted to stay on the path, after they hit me with their bike and push me onto the fence, they punched me, then rode off. I was really shaken after that, but I can't see well enough to know who it was or hear if they spoke to me.

On the Wednesday, I had a hospital appointment which meant another shared path. The cyclists and e-scooter people go so fast. I could feel the wind as they brushed past me. I don't hear them coming and when the brush past, touching me, I don't have time to brace myself so I lose my balance. When I fall over, the people who push me or crash into me rarely stop to see if I'm OK.

To finish off the bad week, on the Friday, I was meeting friends. As I walked along the footpath, something hit me in the legs and I fell over. I got up and kept walking, thinking it was low branches on an overhanging bush. I was wrong, it was a small child on a small bike. The mother was very angry, grab my arm and shake me. I was very scared, until my friends arrived and helped me.

By the end of the week I was battered, bruised and feeling insecure.

I would like to say being hit by bikes, scooters, pushchair and people using their phones was unusual, but unfortunately that's not true.

Whether I am walking with my guide dog or using my white cane, other footpath or shared path

users crash into me, push me out the way.

It's scary, but going out is the only way I can be independent, to do that cost effectively I have to walk.

The footpath needs to be safe for people like me.

Thanks for listening

Carl.'

Annexure 4.

Letter from the Footpaths4feet Coalition to Associate Minister of Transport, Julie Ann Genter, dated 21/7/2019 reminding her of NZ's obligations under the UN Convention on the Rights of Persons with Disabilities.

Julie Anne Genter
Associate Minister for Transport
j.genter@ministers.govt.nz

21 July, 2019

Dear Minister Genter,

E-scooters using footpaths and disabled people as pedestrians

We, the Footpaths for Feet Coalition, were greatly heartened to learn recently that you¹ and the Ministry of Transport² are committed to the principle that pedestrians and cyclists should be able to get about safely and to feel safe.

Our coalition consists of both able-bodied and disabled representative organisations (representing many tens of thousands of individual members). The use of e-scooters and other motorised devices on footpaths is a concern to us all but has a particular importance to disabled people.

We would like to reiterate New Zealand's obligations as a States Party to the UN Convention on the Rights of Persons with Disabilities³ (CRPD), to provide, not hinder, disabled persons ability to get about independently and to involve disabled persons in making decisions about actions which will affect them disproportionately compared with the general population.

In particular, Article 9 of the CRPD states:

"1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; "

And Article 4 (3) states:

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- 1 Julie Anne Genter address at the opening of He Ara Kotahi in Palmerston North 7/6/2019.
 - 2 Ministry of Transport brief on the draft Road Safety Strategy 2020-2030 consultation document, June 2019.
 - 3 The Convention was adopted by the U.N. in December 2006 after efforts led by NZ's permanent representative to the U.N., Don Mackay. It entered into force on 3rd of May 2008. It is accessible at [UN CRPD](#).

"In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."

In addition, General Comment 7 (adopted by the Committee at its 20th session held from 27/8 to 21/9/2018 and released on 9/11/2018)⁴ clearly laid out the Committee's expectations of States Parties who are signatories to the CRPD.

Paragraph 9 of General Comment 7 says:

"States Parties should acknowledge the positive impact on decision-making processes and the necessity of involving and ensuring the participation of persons with disabilities, through their representative organizations, in such processes, notably because of their lived experiences and knowledge of the rights to be implemented...."

Paragraph 19 of the same General Comment is even more direct, stating:

"Consultations under Article 4(3) prevent States Parties from engaging in any act or practice that may be inconsistent with the Convention and the rights of persons with disabilities. In cases of dispute about the direct or indirect impact of the measures under discussion it falls to the public authorities of the States Parties to prove that the issue under discussion would not have a disproportionate effect on persons with disabilities and therefore, that no consultation is required."

This is directly relevant to the use of e-scooters and other forms of micromobility on footpaths which are a backward step in terms of meeting NZ's obligations under the Convention.

And paragraph 28 of General Comment 7 states:

"The right to participate is a civil and political right and an obligation of immediate application, not subject to any form of budgetary restriction, to be applied to decision-making, implementation and monitoring processes related to the Convention. By guaranteeing the participation of organizations of persons with disabilities at each of these stages, persons with disabilities would be able to better identify and point out measures that could either advance or hinder their rights, which ultimately yields better outcomes for such decision-making processes. Full and effective participation should be understood as a process, not as an individual one-time event."

Including disabled people in the consultation process is beneficial. Government officials are highly skilled in their areas of expertise. Disabled people are experts in disability rights and in determining how public policy decisions will affect them. Collaboration between professionals and disabled people can lead to innovative thinking and creative solutions.

We believe that including disabled people in the consultation process will allow them to identify issues that government officials might overlook, thus creating more robust public policies.

As a coalition of community groups, we know that many disabled people don't have independent access to cars and rely heavily on pedestrian routes, footpaths and

4 General Comments are accessible at [General Comments](#)

public transport to access their community, get to and from work, and go about their daily lives.

We are concerned that e-scooters have been given permission to access pedestrian routes and footpaths in a number of cities despite disabled people raising safety and accessibility concerns with the NZTA and other decision making authorities.

We ask that you request the data and evidence on which NZTA based its decision to allow e-scooter access onto footpaths. We would like to see the evidence that shows that e-scooters do not have a disproportionate effect on disabled pedestrians.

We would also appreciate you providing us with an explanation of how proposals to re-allocate footpath space for use by riders of e-scooters and other non-active, motorised devices, and cyclists comply with the CRPD.

At our meeting with you earlier this year we suggested solutions to improve safety and amenity for pedestrians on footpaths. We are still available to work with officials to develop this further.

We reiterate our support for modes of transport that will help to lessen New Zealanders' dependence on private cars if they are used in the right places at the right times and in the right way.

Finally, meeting the needs of disabled members of our society will benefit everyone, particularly parents walking with young children, in or out of prams, as well as older pedestrians.

Thank you.

Yours sincerely,

Ellen Blake

(on behalf of the Footpaths for Feet Coalition)



cc:

Phil Twyford

Minister of Transport

p.twyford@ministers.govt.nz

Carmel Sepuloni

Minister for Disability Issues

c.sepuloni@ministers.govt.nz

Annexure 5 (attached separately).

Legal opinion (and 11 appendices) of Sir David Williams, QC, on the legality of the use of e-scooters on footpaths and whether the Accessible Streets Package proposals for the use of footpaths by people riding bicycles and powered light individual transport devices complies with the UN Convention on the Rights of Persons with Disabilities.

PART 4

3 videos showing pedestrians being passed by a rider on a typical NZ footpath (attached separately)